DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Head notes prepared by M. P. Burks, State Reporter.)

MOORE AND OTHERS v. POWELL & BRYAN AND OTHERS.—Decided at Staunton, September 27, 1897.—*Cardwell*, J:

1. WILLS—*Construction of—Case at bar—Election.* A testator by his will declares, "My daughters are to retain the old homestead so long as they are single and unmarried." At the time the will was written, and when the testator died, he owned a tract of land on which he resided with his family, and his wife owned as her maiden land an adjacent tract on which the family had resided twenty years previous thereto, the dwelling house on which had been destroyed. Neither tract was known by the designation of "the old homestead." The wife survived her husband twenty years, and devised her tract of land, but it was subjected to her debts by her creditors.

Held: The testator intended to devise the tract owned by him, and not that of his wife. Election, when available, must appear in clear terms on the face of the will, and cannot be shown by parol.

MILLER v. WILLS AND OTHERS.—Decided at Richmond, November 18, 1897.—*Riely*, J:

1. CHANCERY PRACTICE—*Injunction to restrain trespass—When awarded—Insolvent or non-resident trespasser.* Although a court of equity will not, as a general rule, interpose to prevent a mere trespass, yet if the act done or threatened would be destructive of the substance of the estate, or if repeated acts of wrong are done or threatened, or the injury is or would be irreparable; in fine, whenever the remedy at law is or would be inadequate, a court of equity will enjoin the perpetration of the wrong, and prevent the injury. The insolvency or non-residence of the trespasser is entitled to much weight in determining whether a court of equity will restrain the trespass.

2. CHANCERY JURISDICTION—*Jurisdiction once acquired retained until complete relief afforded.* Where a court of equity has properly acquired jurisdiction of a case, it will, in order to prevent a multiplicity of suits, go on to do complete justice, though in doing so it has to try title, or settle boundaries and administer remedies which rightfully pertain to courts of law.

3. VIRGINIA AND TENNESSEE—*Boundary line.* The true boundary line between the States of Virginia and Tennessee is a straight line beginning on top of White Top Mountain where the northeastern corner of Tennessee terminates, and follows a due west course midway between Walker's line and Henderson's line to the top of Cumberland Mountain, where the southwestern corner of Virginia terminates. The validity of this line is established by *Virginia* v. *Tennessee*, 148 U. S. 503.

4. CHANCERY PRACTICE—*Issue out of chancery—Disposition of verdict—Review by Appellate Court.* A court of equity has the right, in a proper case, to order one or more issues to be tried by a jury either at its own bar or in a court of

common law. The issue, except where directed by statute, is a mere incident to the suit in chancery. It is directed merely to satisfy the conscience of the Chancellor, and if he is not satisfied with the verdict he may set it aside and award a new trial of the issue, or he may disregard it and proceed to decide the cause without the intervention of another jury. But this discretion of the Chancellor, either in awarding the issue in the first instance, or in approving or disregarding the verdict of the jury in response thereto, is a sound judicial discretion, and is subject to review by the appellate court. Where the evidence relating to the particular fact in dispute is contradictory and evenly balanced it is the peculiar province of a jury to weigh the evidence and decide the issue, and it is error for the Chancellor to set aside the verdict.

5. BOUNDARY LINE BETWEEN STATES—*If res judicata as to State, effect on citizen.* If the boundary line between two States has been judicially ascertained in a suit between those States so as to be binding on them, it is equally binding on the citizens of those States.

6. RES JUDICATA—*Suits touching same matter—Different matters—Case at bar—Boundary line between Virginia and Tennessee.* Where there have been two suits upon the same claim or demand, the judgment or decree in the first suit, if rendered on the merits, constitutes an absolute bar to a subsequent suit. All of those matters which were offered or received, or which might have been offered to sustain the particular claim or demand litigated in the prior suit, and those matters of defence which were presented or which might have been introduced under the issue to defeat such claim, are concluded by the judgment or decree in the former suit. But in a second suit between the same parties or their privies upon a different claim or cause of action, the judgment or decree in the first suit, in order to bar the second suit, must have been rendered between the same parties or their privies, and the point of controversy must have been the same, and have been determined on its merits. In the case at bar the issue is the location upon the ground of the compromise line of 1802 between the States of Virginia and Tennessee, and not the validity of that line which was the issue determined by *Virginia* v. *Tennessee*, 148 U. S. 503.

WOODS v. EARLY.—Decided at Richmond, November 18, 1897.—*Cardwell*, J:

1. CHANCERY PLEADING—*Petition to rehear—Requisites of.* A petition to rehear a chancery suit, which does not allege the discovery of new and important testimony not known or accessible to the petitioner before the former hearing, and which points out no error upon the face of the former decree, should be dismissed.

2. TENANTS IN COMMON—*Proposed changes by one tenant to injury of another—Injunction—Case in judgment.* A tenant in common has no right to alter or change the common property to the injury of his co-tenants without their consent, and where such injury would be material, continuing, and not adequately reparable in damages, it may be restrained by injunction. In the case in judgment the evidence shows that the appellant and the appellee are tenants in common of the property in question, and that the alterations in the building proposed by the appellee would materially damage the property of the appellant.